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UNCLAS SECTION 01 OF 02 GUATEMALA 000137

SIPDIS

SENSITIVE

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SUBJECT: USING THREAT OF GSP REVIEW TO PREPARE FOR CAFTA

11. (SBU) Summary: Pending further steps from the GOG to protect labor rights, Embassy recommends that USTR inform the Guatemalan Embassy in Washington (and the Department instruct us to inform the GOG here) that the GSP petition is under informal USG review pending an assessment of current GOG efforts in three areas. We believe that doing so could lead to progress in: bringing overdue criminal prosecutions to court; streamlining the labor justice system; and reinstating illegally fired workers. End Summary.

#### Background

12. (SBU) On December 2, the AFL-CIO filed a petition with USTR to withdraw GSP benefits from Guatemala due to lack of compliance with labor rights conditions. The International Labor Rights Fund also submitted petitions against Guatemala and El Salvador. We have reviewed the AFL-CIO petition, but not that of the ILRF.

13. (SBU) Guatemala has been reviewed many times over past decades, but has never lost GSP benefits. This review would be the first since USTR announced in May 2001 suspension of review of Guatemala in the wake of passage of major Labor Code reforms and sentencing of labor violators in the SITRABI trial. At that time and since, the USG has repeatedly expressed concern that the revised labor code be effectively enforced.

14. (SBU) The standard for labor rights compliance with GSP is broad and low (i.e. for the GOG to be "taking steps" to afford its workers their internationally recognized labor rights). Thus Guatemala's immediate problem is less the massive labor violations that occur every day than the impunity that labor rights violators generally enjoy, despite adequate protections in law. That impunity stems from a weak labor justice system, a weak criminal justice system, and weak labor code enforcement measures by the Executive. The DYMEI case was a good example of this, until US interests spurred us to take corrective action. The end result was a happy exception to the rule that even if workers win in court, labor violators can avoid justice.

#### The Petition

15. (SBU) The AFL-CIO petition is generally accurate describing specific failures of the GOG to guarantee labor rights. It describes many notable cases in which fundamental labor rights, including the right to organize a union, have been flagrantly violated by employers, who often dismiss labor organizers in violation of labor code protections. Labor courts often rule against employers (as in the DYMEI case), but sentences are not enforced if employers refuse to reinstate illegally fired workers.

16. (SBU) Even more serious are a series of unsolved murders of labor leaders (the GSP petition mentions six since January 1999; MINUGUA cites four in the period 1/1/2000-9/15/02; another murder occurred in late November, 2002). In response to international criticism (from the ILO and under the GSP process) the Public Ministry formed a new Special Prosecutor for Crimes Against Unionists and Journalists in July 2001, to centralize investigation of these cases. However, the Special Prosecutor's Office suffers from the usual resource constraints and is regarded as hostile to labor concerns by unions. As of September 2002, the MP had issued only two arrest warrants for 51 open cases.

17. (SBU) The petition also describes some cases which have since been resolved to a certain extent or been addressed by non-government actors:

-- Coca Cola's local bottler recently agreed to a collective bargaining agreement with its union;

-- Jalapa municipal workers struck in 2002, but returned to work after concessions from the mayor;

-- Choi Shin-Cimatextiles maquila has instituted regular meetings with its unions, though nobody has been charged for earlier violence there;

-- ILO/IPEC has announced a new project to combat child labor in the Guatemala City municipal dump.

18. (SBU) Finally, the petition ignores positive GOG actions (or "steps") on some fronts. In 2002, these positive actions included the creation of a consensual National Plan for Occupational Health and Safety in 2002, cooperation with the ILO's International Program to Eliminate Child Labor in several sectors of the economy, and the revitalization of the Labor Ministry under a new labor minister, Victor Hugo Godoy. Godoy took office in February 2002, has had some success reforming his ministry internally, while maintaining good relations with AID and the Embassy, and has moderated the antagonism between his predecessor and the private sector. Labor Ministry fines are up, (the total is more than 10 times the total imposed by labor courts in the past 50 years, according to Labor Minister Godoy) though they are lower than permitted under the new labor code.

19. (SBU) In 2001, we used the pressure of formal GSP review to support legislative changes to bring the Guatemalan labor code in compliance with its ILO commitments. Though the outcome was what the USG sought, it came at some political cost. The resulting reforms gave the Labor Minister new enforcement powers, which have not been forcefully exercised since employers have recourse to the courts, but which represent a real advance in the law. However, despite the increase in fines cited by the minister, the situation facing most Guatemalan workers who try to form unions is little changed.

#### Recommendation

10. (SBU) Given this situation, Embassy wishes to encourage further GOG remedial actions to protect labor rights. We therefore recommend that USTR inform the Guatemalan Embassy in Washington (and the Department instruct us to inform the GOG here) that the GSP petition is under informal review (i.e. that a formal USTR decision will be made after the Embassy assesses GOG progress accomplishing the elements outlined below).

A. Bring overdue criminal prosecutions to court and replace Special Prosecutor:

We will suggest that the Attorney General replace the current Special Prosecutor for Crimes Against Unionists, given the latter's poor performance. As in other areas of law enforcement interest, we will press for results on outstanding criminal cases, particularly unsolved murders. The AG will want resource support to accomplish this, and we should consider that request when it comes. NAS is already planning to donate used excess computer equipment from other Public Ministry programs.

B. Streamline the labor justice system:

While the former minister introduced draft legislation to speed labor enforcement, it has not been acted on by Congress and is not supported by labor or employer groups. Instead, a labor justice committee was formed by the GOG with UNDP support and participation by judicial system and Executive branch members, and civil society (labor and employer groups). We should support this effort, and press for concrete results (consensual administrative and legislative changes to improve the labor justice system, including more vigorous police enforcement of judicial sentences).

C. Reinstate illegally fired workers:

The AFL-CIO GSP petition cites the Finca Maria Lourdes case as emblematic of the problems of reinstating workers fired for attempting to organize a union on a traditional coffee plantation. It also involves an affiliate of the labor federation directly supported by the AFL-CIO. We will urge that the GOG effect a resolution (through reinstatement or a financial settlement of workers claims) of this case.  
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